



**The Comptroller General
of the United States**

Washington, D.C. 20548

Mertfall

Decision

Matter of: Interstate Equipment Sales
File: B-225701
Date: April 20, 1987

DIGEST

1. Contracting officer did not improperly influence Small Business Administration (SBA) decision not to issue certificate of competency (COC) by communicating her negative views regarding protester's responsibility and recommending against issuance of a COC. The Federal Acquisition Regulation encourages a full exchange of information between the contracting agency and the SBA.
2. Fact that Small Business Administration (SBA) agreed with contracting officer that protester lacked integrity does not establish that SBA merely adopted the contracting officer's view without conducting its own investigation.
3. General Accounting Office will not conduct an investigation for the purpose of establishing whether protester has a valid basis of protest. The protester bears the burden of presenting its case.

DECISION

Interstate Equipment Sales protests the rejection of its offer under request for proposals (RFP) No. F09603-85-R-1567, issued by Warner Robins Air Logistics Center for high pressure vacuum sewer and pipe cleaning trucks. Interstate, a small business, alleges that the contracting officer improperly induced the Small Business Administration (SBA) not to issue to that firm a certificate of competency (COC). We deny the protest.

The contracting officer requested a preaward survey of the low offeror, Interstate. The survey team recommended against award based on that firm's lack of technical and quality assurance capability and failure to meet the requirements of the Walsh-Healey Public Contracts Act as a regular dealer.

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The contracting officer, by letter of December 2, 1986, referred the matter to the SBA for the possible issuance of a COC. In addition to the results of the preaward survey, the contracting officer noted that Interstate certified on a prior contract that it would supply a product of a small business and in fact delivered equipment made by a large business. The contracting officer concluded by recommending that a COC not be issued because "we do not believe that Interstate Equipment Sales has the capacity or integrity to successfully perform Government contracts." On December 22, the SBA declined to issue a COC based on Interstate's failure to refute the allegation of lack of integrity. A contract was awarded to the next low offeror on December 31.

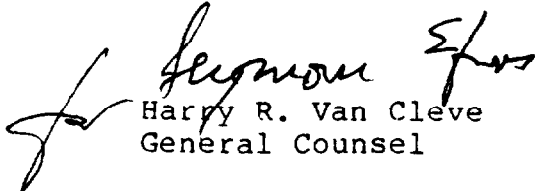
Interstate principally claims that the contracting officer acted in bad faith by directing the SBA to deny its application for a COC, thereby depriving the protester of any realistic chance of being found responsible.

We do not think that the contracting officer's letter of referral to the SBA can be said to have "directed" the agency to reject Interstate's application for a COC; it merely summarized the basis for the contracting officer's determination of nonresponsibility and urged the SBA to affirm that determination. Not only are such communications between the contracting agency and the SBA unobjectionable, they are in fact encouraged. The Federal Acquisition Regulation (FAR) instructs the contracting officer to specify in letters of referral to the SBA the elements of responsibility found lacking, 48 C.F.R. § 19.602-1(c) (1986), and provides that when disagreements arise about a concern's ability to perform, the contracting officer and the SBA shall make every effort to reach a resolution through the complete exchange of information. 48 C.F.R. § 19.602-3(a). The fact that a contracting officer's views are negative does not change her responsibility to communicate them or show that she acted in bad faith. Cal Pacific Fabricating, Inc.--Request for Reconsideration, B-214946.2, June 28, 1984, 84-1 CPD ¶ 689.

Furthermore, the fact that SBA agreed with the contracting officer that Interstate lacked integrity does not establish that SBA merely followed the contracting officer's "directive" without conducting its own investigation. The SBA states that it considered the protester's rebuttal of the contracting officer's findings and its own independent investigation, along with the preaward survey, in determining not to issue Interstate a COC. The protester has offered no evidence to refute this. It therefore has not shown that SBA failed to follow its own regulations or acted improperly in considering its COC application.

Further, Interstate requests that we conduct an investigation of these matters. The protester has the obligation of presenting its case, and we will not conduct investigations for the purpose of establishing whether a protester may have a valid basis of protest. Nickum & Spaulding Associates, Inc., B-222468, June 10, 1986, 86-1 CPD ¶ 542.

The protest is denied.

 Harry R. Van Cleve
General Counsel